

## CALIFORNIA FRANCHISE TAX BOARD

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### 10000 STATUTE OF LIMITATIONS

The Statute of Limitations is a time limit imposed by law on the right of both the state and taxpayer to increase or decrease the taxpayer's self-assessed taxes. When we create a case unit, PASS automatically calculates a Statute date based upon the external accounting systems. You must review the returns to verify this date.

When verifying the Statute date for the case or case unit, consider whether the taxpayer is a fiscal year end taxpayer. Do not assume the Statute date is March 15 or April 15.

We deem an application, tax return, claim, etc., filed on the date postmarked. If it is mailed after the due date, it is date stamped with the date that it is received by the department. If the statute of limitations expires on a Saturday, Sunday, or holiday, the statute expiration is effectively extended to the next business day. *Filing an amended return will not change the Statute date.*

When one case involves several case units, with different Statute dates, each case unit's General Information window must show its Statute date.

AB 414 (Chapter 614, Stats. 1999) amends Section 19306, revising the statute of limitations for filing claims or allowing credits or refunds. For years 1992-2000, the Statute for refunds is four years from the original due date of the return, without extensions, or one year from the date of overpayment. This means that the Statute for claiming a refund or issuing a Notice of Proposed Overassessment in these years generally expires earlier than the Statute for issuing a Notice of Proposed Assessment. (The Statute for deficiencies is four years from the date the return was filed.) Under the new law, the refund Statute is generally the same as the deficiency Statute if the tax return is filed on time. *The amendments to Section 19306 apply to any taxable years with open Statutes on January 1, 2000 or later.*

Plan and perform audits so that reasonable taxpayer effort results in the audit's completion within the normal Statute of Limitations. *Waivers are not an acceptable substitute for a prompt, timely audit.* If the taxpayer's circumstances make it substantially difficult to complete the audit on time, we will generally allow them to extend the time by executing a waiver. For more information, see GTAM 14000, *REVIEW*.

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For all Central Office PASS cases subject to review, you must write the Statute of Limitations date on the notes section of the *Batch Control Worksheet* (Form FTB 6148) in red and circle it.

Here is a brief summary of the general Statute provisions, effective January 1, 2000. Different statutes govern different situations. Please note the difference between statutes for proposed deficiency assessments and for refunds or credits. For details, refer to the listed California Revenue and Taxation Code sections.

### STATUTE OF LIMITATIONS CODE SECTIONS

<b>PIT &amp; CORP</b>	<b>Notice of Proposed Assessment must be issued <i>within</i>:</b>	<b>Notices of Proposed Overpayment, Credit or Claim For Refund <i>filed within</i>:</b>
Normal	The later of four years after original due date or four years after date filed (CR&TC section 19057 CR&TC section 19066)	The later of: 1. Four years from the date the return was filed, but only if the return is filed by the due date or extended due date; 2. Four years from the original due date, without extensions; or 3. One year from the date of overpayment (Sec. 19306, effective January 1, 2000, for any taxable years with open Statutes on that date)

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State Waiver	Period agreed upon (CR&TC section 19067)	Period agreed upon if signed waiver does not bar refund. (CR&TC section 19308 and CR&TC section 19309)
Omission of 25% of gross income	Later of six years after date return filed or original due date (CR&TC section 19058 CR&TC section 19066)	N/A
Federal Waiver signed	Later of normal California statute or six months after Federal waiver expires (CR&TC section 19065)	Later of normal California statute or six months after Federal waiver expires (CR&TC section 19308)
Federal change reported by taxpayer (or State return amended for federal change) within six months of federal determination. See Note below regarding reporting requirements.	Later of normal statute or two years from the date the notice or amended return is filed with the Franchise Tax Board. Applies to Federal adjustments only. (CR&TC section 19059)	Later of two years from the date of final federal determination, or four years from due date of return or one year from overpayment. (CR&TC section 19311)
Federal Change reported by taxpayer (or State return amended for federal change) more than six months after the final federal determination. See Note below regarding	Four years after the date the taxpayer notifies us. Applicable for Federal adjustments only. (CR&TC section 18622, CR&TC section 19060)	Later of two years from the date of final federal determination, or four years from due date of return or one year from overpayment. (CR&TC section 19311)

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reporting requirements.		
Federal change not reported, or amended State return for federal change not filed	Any time; Statute of limitations is suspended. (CR&TC section 19060)	Later of two years from the date of final federal determination, or four years from due date of return or one year from overpayment. (CR&TC section 19311)
Bankruptcy	Running of statute suspended up to two years. (CR&TC section 19089)	Four years after due date, without regard to any extension of time for filing return. (CR&TC section 18526)
Joint return after filing separate returns	One year, in addition to time period under CR&TC sections 19057-19067, after joint return filed. (CR&TC section 18529)	
Request fiduciary (See LR 082)	18 months after written request to invoke provisions of CR&TC section 19517 made subsequent to or concurrently.	N/A
Substantially Disproportionate Redemptions	One year after notice by taxpayer of reacquisition of stock. (CR&TC section 17322)	N/A
Fraud; or no return filed	No statute of limitations. May assess at any time. (CR&TC section 19057)	The later of: 1. Four years from the date the return was filed, but only if the return is filed on time by the due date or extended due date; 2. Four years from the original due date, without extensions; or 3. One year from the date of overpayment. (CR&TC section 19306, effective

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		January 1, 2000; applicable to any taxable years with open Statutes on that date)
Unreported installment income (Corp.)	Four years after taxpayer ceases to be subject to tax (CR&TC section 24672 - Corp.)	N/A
TRANSFeree (a) Original Transferee – CORP	One year beyond the normal statute of limitations (CR&TC section 19074)	N/A (b) Transferee of a Transferee
(b) Transferee of a Transferee – CORP	One year after the expiration of the period of limitation of the preceding transfer. For exceptions see CR&TC section 19074(b), (c), & (d).	N/A

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GTAM 10100	SPECIAL STATUTES
GTAM 10200	WAIVERS
GTAM 10300	STATUTE OF LIMITATIONS / TIME LIMITS - GTATRS REVIEW

**NOTE:** ((\* \*\*)) = Indicates confidential and/or proprietary information that has been deleted.

Reviewed: November 2004

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### **10100 SPECIAL STATUTES**

GTAM 10105	Financial Disability
GTAM 10110	Offset of Barred Refund
GTAM 10120	Erroneous Refunds

If the normal four-year Statute is open when a Special Statute becomes effective, the Special Statute will apply. An exception is California Revenue and Taxation Code, section 19517 (request by fiduciary), which supersedes both the normal statute and the statutes relating to federal waivers (CR&TC section 19056) and federal changes. (CR&TC section 19060 & 19059)

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### 10105 Financial Disability

Statute of Limitations is suspended for individual taxpayers for a refund claim during any period that the individual is "financially disabled." This provision applies to both original and amended returns as well as claim for refund correspondence, if the statute of limitations had not expired by September 23, 2002. (CR&TC section 19316)

A taxpayer is considered financially disabled if the individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed terminal, or is expected to last for a continuous period of not less than 12 months.

An individual taxpayer is not considered financially disabled if, for any period, the individual's spouse or any other person, is legally authorized to act on that individual's behalf in financial matters.

Taxpayers must complete *Financially Disabled – Suspension of the Statute of Limitations* – Form FTB 1564 in order to support their qualification under this provision.

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### 10110 Offset of Barred Refund

Although it does not extend the Statute of Limitations for a claim for refund, CR&TC section 19314, allows taxpayers to offset a barred refund against a deficiency from:

- A transfer of items of income, deductions, or both, from one year to another for the same taxpayer.
- A transfer of items of income, deductions, or both, for the same year for a related taxpayer described in CR&TC section 19110.

Taxpayers must file the offset before seven years after the due date of the return on which they find the overpayment.

If taxpayers claim overpayment pursuant to CR&TC section 19314, and the issue in question deals with straddle investments, be aware that *if the straddles entered into are shams, then section 19314 cannot apply* because there was never any item of income to report. In addition, if we disallowed the straddles because transactions were not entered into for profit, then section 19314 *cannot apply* since we consider the closing of each straddle transaction a separate transaction (*Smith v. Commissioner, 78 T.C. 350 (1982)*).

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### 10120 Erroneous Refunds

Neither California law nor federal law explicitly defines the term *erroneous refund*. However, federal case law interprets the term as any improper payment of government funds (*U.S. v. Green*, 28 F.Supp. 549; *Smyth v. U.S.*, 92 F.2d 900; *Crocker First National Bank of San Francisco v. U.S.*, 137 F.Supp. 573).

We may assess or collect the amount mistakenly made or allowed as a refund, in whole or part, after we issue a notice and demand repayment with a Notice of Proposed Assessment. Under California Revenue and Taxation Code, section 19104, we may bring an action for recovery of an erroneous refund or credit (payment) by the later of:

- Until two years after the refund or credit was made.
- During the period in which we may mail a Notice of Proposed Assessment.

Subdivision (b) of CR&TC section 19104, provides for the abatement (grace period) of interest assessment on certain recoveries of erroneous refunds. The grace period for interest on the erroneous refund can be up to 30 days after the repayment demand (Notice of Proposed Assessment).

**NOTE:** A paid amended referral that is later audited and adjusted is not an erroneous refund. If the case involves multiple issues, such as erroneous refund and non-erroneous refund, issue separate Notices of Proposed Assessment.

See GTAM 13240, *Complete Adjustment Forms (NPA, OA)*, for more information.

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### 10200 WAIVERS

GTAM 10210	Corporation Waivers
GTAM 10220	Securing the Waivers
GTAM 10230	Federal Waivers

To extend the statute of limitations expiration date for issuing deficiency assessments or refunds, we must get authorization on the *Waiver Extending Statute of Limitations* (Form FTB 3570) (various forms).

- Form FTB 3570D extends the statute of limitations for an individual taxpayer.
- Form FTB 3570 extends the statute of limitations for a corporate taxpayer.
- Form FTB 3570C extends the statute of limitations when federal adjustments are reported.

*We can accept only original waivers.* We accept a facsimile (fax) or photocopy of a signed waiver temporarily *only if the original document is subsequently provided*. You may proceed with an examination if you receive a facsimile or photocopy of a signed waiver before the original statute of limitations expires.

*You must try to get a waiver signed if the statute expires within six months!* Consider how much time we need to complete the case. When requesting a waiver, decide if we need waivers for any other years involved.

We must record that we have notified taxpayers that they have the right to refuse to sign the waiver and to limit the extension period. Our current waiver forms include this notification. If information regarding taxpayer rights is not on the waiver form, record in the case file the date we informed the taxpayer either verbally or in writing, before each request.

The waiver should include:

- Your phone number.
- Reply instructions.
- Taxpayer's name according to the return. Include any transferee or DBA (Doing Business As), if appropriate.
- Account number.
- Tax years to which the waiver applies. Be specific. If the waiver covers a fiscal year taxpayer, indicate "IYE MM/DD/YYYY."
- Extended statute date.

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Normally, our statute of limitations to issue a deficiency notice on a delinquent return expires four years from the date filed. For refunds, the Statute is the later of four years from the due date of the return, without extensions, or one year from the date of overpayment. As of January 1, 2000, all open refund Statutes are the same as the Statute for deficiencies. The request for a waiver should not state, "... *The extension will extend the time for claiming a refund,*" unless the period for claiming a refund has not yet expired. You should verify the language on the Form FTB 3570.

When you get the waiver, compare the information on it with the information on the waiver originally sent. Consider the following points:

- If the waiver is for a joint personal income tax return, both husband and wife should sign it. We may obtain separate waivers from each spouse. If only one spouse signs a waiver, that waiver is still valid for the spouse that signed, because each spouse is liable for 100% of the liability.
- If one of the spouses is deceased, only the surviving spouse needs to sign, and any NPA will be issued in the surviving spouse's name.
- A duly authorized representative may also execute the waiver through an executed *Power of Attorney* that specifically provides that agent with the right to extend statutes of limitations. If the representative is listed on the Power of Attorney database, and has the authority to extend the statute, we do not need another original waiver. See GTAM 12000.
- Verify the original signatures on the waiver by matching them with the signatures on the original tax returns.
- Make sure the waiver is not altered. A waiver that is altered or accompanied by modifications in a cover letter is invalid. If you cannot get an unaltered waiver before the current statute of limitations expires, you should issue notices of proposed assessment to protect the audit from running out of time.
- Confirm that the waiver was signed before the current statute of limitations expired.
- Attach the original completed waiver to the tax return to which it applies.

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### 10210 Corporation Waivers

A principal officer—president, vice-president, secretary, treasurer, or secretary-treasurer—must sign the waiver, unless the corporation has duly authorized another corporate official through a valid Power of Attorney (Form FTB 3520). A Power of Attorney authorizing signature must accompany waivers signed by a representative. The corporate waiver must state the title of the signer, who must be a *current* officer of the corporation, and be executed on or before the default date that the statute of limitations expires.

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### 10220 Securing the Waivers

Make a copy of the waiver and put it in the Received Correspondence file. Attach the original waiver to the front of its return. Note the location of the original waiver in red pencil on the copy, and provide the return's Document Locator Number.

To attach the waiver, fold it so that the "*extended waiver date*" shows on top. Staple the waiver to the front of the return below the taxpayer's name and address. The waiver should not cover the face of the return or the entity section of the return.

Note the date that you received the waiver in the Event Log and Received Correspondence Section.



- Determine that the waiver is valid.
- Photocopy the waiver.
- On the copy, write in red pencil the location of the original waiver and the Document Locator Number of the return.
- Put the copy in the Received Correspondence file.
- Attach the original waiver to the return to which it applies. Fold it so that the "*Extended Waiver Date*" shows at the top.
- Revise the Statute of Limitations.
- Check the "*Waiver Indicator*" box.
- Record the date that you received the waiver in the Event Log.
- For individual taxpayers, update the TI account.

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### 10230 Federal Waivers

The Internal Revenue Service has two types of statute of limitations waivers. They are:

- **Form 872** provides for specific taxpayers, specific taxable years, and an extended statute date.
- **Form 872A** provides for an open-ended statute with no specific extension date. The IRS uses this form for cases at the appeal level since it eliminates the need to keep track of extended statute dates.

Get a state waiver even if there is a federal waiver, so that the taxpayer understands that the extension date for state purposes may be different. There must be evidence in the file to substantiate that the statute is open before we can issue notices.

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### 10300 STATUTE OF LIMITATIONS / TIME LIMITS - GTATRS REVIEW

Completed cases with other than “normal” Statutes of Limitations should have an explanation on the *Narrative Report*, *Audit Report* -Form FTB 6430, and on the *Notice of Proposed Assessment*.

Cases with “non-normal” Statutes of Limitations may be:

- The taxpayer has signed a Statute of Limitations waiver. You should attach the original waiver to the face of the return to which it applies.
- The extension resulted because we received a federal audit report.
- The issue involves the special six-year statute of limitations.

You must submit completed cases to the GTA Technical Resource Section at least six months before the Statute of Limitations expires. They need enough time to review the case fully and to contact the taxpayer with any issues.

If the statute expires fewer than six months after the examination is completed, complete the *RUSH Action Slip* (Form FTB 7011) (see GTAM 13760, *Rush Action Slip*). Circle the Statute date in red, on the Rush tag. Attach this form to the physical file for rush processing. Route the physical file.

Transfer the electronic file to the appropriate Audit Business Support Group Worklist (see GTAM 13700, *Routing the Physical & Electronic Files*). Send an email message to the GTA Technical Resource Section group email to tell Audit Business Support that the statute of limitations is pending and that you have transferred the physical file.

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